

Message Text

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ACTION L-03

INFO OCT-01 ARA-11 ADP-00 SCA-01 JUSE-00 RSC-01 RSR-01

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R 242346 Z MAY 73

FM AMEMBASSY MEXICO

TO SECSTATE WASHDC 6165

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E. O. 11652: N/ A

TAGS: CPRS/ SNAR/ MX

SUBJECT: EXTRADITION: RAFAEL PINEIRO VELASCO

REF: STATE A-4199, MAY 14, 1973.

1. EMBASSY REQUESTED EXTRADITION OF RAFAEL PINEIRO VELASCO VIA FIRST PERSON NOTE DELIVERED TO FOREIGN SECRETARIAT MAY 22. ON MAY 24, LIC. ABARCA TOOK INITIATIVE TO COME TO EMBASSY TO DISCUSS PERCEIVED DIFFICULTIES IN CASE AS PRESENTED.

2. FIRST AND MOST SERIOUS PROBLEM CONCERNS WARRANT FOR ARREST WHICH DOES NOT SPECIFY CHARGES OTHER THAN " FAILURE TO APPEAR". ABARCA BELIEVES THAT LANGUAGE OF ARTICLE VIII OF EXTRADITION TREATY MAKES CLEAR THAT ACCOMPANYING WARRANT FOR ARREST SHOULD BE ORDER FOR DETENTION BASED ON CHARGES FOR WHICH ACCUSED IS INDICTED. HE QUESTIONS WHETHER ORDER FOR ARREST BASED ON FAILURE TO APPEAR IS ACCEPTABLE IN THIS CONTEXT.

3. ABARCA WENT ON TO EXPRESS HIS HOPE THT ORIGINAL DOCUMENTS CAN BE PRODUCED FOR USE DURING EXTRADITION HEARINGS. HE WILL, IF NECESSARY, FORWARD COPIES TRANSMITTED UNDER REFERENCED AIRGRAM, BUT STATED THAT IT WOULD BE HIGHLY DESIRABLE TO HAVE ORIGINALS IN ORDER TO AVOID MISADVENTURE BASED ON MERE LEGAL TECHNICALITIES.

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4. FINALLY, ABARCA NOTED THAT CORRESPONDING AFFIDAVITS CONTAINED TESTIMONY OF ONLY ONE MATERIAL WITNESS. REFERRING TO ARTICLE III OF EXTRADITION TREATY, HE NOTED THAT UNDER MEXICAN LAW, NORMALLY AT LEAST TWO MATERIAL WITNESSES ARE REQUIRED IN ORDER TO ESTABLISH CORPUS DELICTI AND PRESUMPTION OF RESPONSIBILITY. HENCE, CASE WOULD BE CONSIDERABLY STRENGTHENED IF TESTIMONY OF AN ADDITIONAL MATERIAL WITNESS COULD BE OBTAINED.

5. ACTION REQUESTED: ON AN URGENT BASIS, A NEW WARRANT OF ARREST SHOULD BE OBTAINED STATING THAT PINEIRO- VELASCO IS TO ANSWER TO AN INDICTMENT BASED ON SPECIFIC AND ENUMERATED CHARGES. IN THE ABSENCE OF SUCH NEW WARRANT, A COURT CERTIFICATION TO EFFECT THAT EXISTING WARRANT IS TANTAMOUNT TO A DETENTION ORDER ("MANDAMIENTO DE PRISION") MAY BE ACCEPTABLE, ALTHOUGH LESS DESIRABLE. ONE OR THE OTHER OF THESE ITEMS MUST BE PRESENTED TO FOREIGN SECRETARIAT PRIOR TO JUNE 5 EXPIRATION DATE OF PREVENTIVE DETENTION PERIOD; OTHERWISE, FOREIGN SECRETARIAT, IN ALL LIKELIHOOD, WILL RETURN CASE TO EMBASSY AS BEING INSUFFICIENT FOR ACTION REQUESTED.
MCBRIDE

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*** Current Handling Restrictions *** n/a

*** Current Classification *** LIMITED OFFICIAL USE

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